

7 Official Opinions of the Compliance Board 5 (2010)

Minutes – Contents – Failure to identify those present and to provide adequate description of topics discussed violated Act

January 21, 2010

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The Open Meetings Compliance Board has considered your complaint that the Chesapeake Town Council violated the Open Meetings Act by failing to properly report required information as part of publicly available minutes following a closed session held on August 20, 2009. For the reasons explained below, we find that the summary of the closed session failed to satisfy the disclosure requirements of the Act.

I

Complaint and Response

According to the complaint, during a public meeting on August 20, 2009, the Chesapeake Town Council voted to go into a closed session at 10:00 p.m. in order to consider a personnel matter. As part of the minutes of its next public meeting, the Council reported: “The meeting was closed at 10:00 p.m. for a Closed Executive Session pursuant to [§10-508(a)(1)(i)] to consult with counsel to discuss the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation, or performance evaluation of appointees, employees, or officials over whom it has jurisdiction on a motion by Mr. Cumbo. Seconded by Dr. Beaudin, all in favor. The meeting was reopened at 10:21 p.m. ...”¹ Minutes of August 20, 2009, Meeting, X. New Business, Item 8-7. As described in the complaint, the summary disclosure was “mainly boilerplate” and “contained no listing of the topics of discussion, persons present [or] action taken.”

In a timely response on behalf of the Council, Elissa Levan, Esquire, acknowledged that the Council met in closed session on August 20, 2009. According to the response, “[a]s required, the Council included in the minutes of its next open session (*i.e.*, the meeting that resumed at 10:21 that evening) a summary of [its] closed session activity, shown as Item 8-7...” The minutes

¹ All statutory references are to the Open Meetings Act, Title 10, Subtitle 5 of the State Government Article, Annotated Code of Maryland.

further disclosed, as reflected in Item 8-8, the substance of the discussion, which included the resignation of the Town Administrator / Town Clerk, appointment of a new Acting Town Administrator, and the appointment of the Assistant Town Clerk as Town Clerk. The response also included a copy of the publicly-available written statement prepared in closing the session.

II

Analysis

A meeting that is governed by the Open Meetings Act can nevertheless be closed to the public for specific reasons enumerated in the Act, provided that certain procedural requirements are followed. One such reason is the need to deal with personnel issues pertaining to specific individuals.

If it is anticipated before the start of a meeting that the meeting will involve a closed session, the Act requires that the public notice of the meeting indicate that, “a part or all of [the] meeting may be conducted in closed session.” §10-506(b)(3). Immediately before the start of a closed session, a majority of the members of the public body present must vote in favor of closing the session to the public. §10-508(d)(1) and (2)(i). The presiding officer must complete a written statement that reflects the reason for closure, including the applicable statutory authority under §10-508, and listing the topics to be discussed. §10-508(d)(2)(ii); 5 *OMCB Opinions* 160 (2007). This statement is a matter of public record that must be available at the time a public body concludes its public session immediately before the start of the closed meeting. §10-508(d)(4); 6 *OMCB Opinions* 121, 124 (2009). Like any meeting governed by the Act, minutes for a closed meeting must be produced. §10-509(b); however, subject to limited exceptions, the minutes of a closed meeting and any recording of the closed session generally are not available to the public. §10-509(c)(3)(ii).²

Finally, germane to the complaint, following a closed session, a public body is required to make certain information about the closed session public as part of the minutes for its next open session. §10-509(c)(2). Specifically, the public body is required to include as part of publicly-available minutes subsequent to a closed session: (i) a statement of the time, place, and purpose of the closed session; (ii) a record of the vote of each member as to closing the session; (iii) a citation of the authority under the Act for closing the session;

² Minutes of a closed session must be made available to the Compliance Board if requested in connection with a complaint. However, the Compliance Board must maintain the confidentiality of the document if the public body considers the document sealed. §10-502.5(c)(2)(ii) and (iii).

and (iv) a listing of the topics of discussion, persons present, and each action taken during the closed session. *Id.* This disclosure requirement is distinct from the written statement required under §10-508(d)(2)(ii). 5 *OMCB Opinions* 165, 170 (2007). While the description of the topics discussed certainly is not expected to be so detailed so as to compromise the purpose of the closed session, it must provide some level of information beyond merely parroting the applicable statutory exception. *See, e.g.,* 4 *OMCB Opinions* 76, 77-78 (2004). The description ought to be sufficient to allow the public an opportunity to evaluate whether the topic fit within the cited exception.

Here, the description of the closed session reported under ¶ 8-7 of the minutes failed to satisfy §10-509(c)(2) in that it provided no meaningful description of the topic of discussion. It simply noted that the Council consulted with counsel in connection with some matter within §10-508(a)(1)(i). Nor did it identify who was present in the room during the closed session. (We assume it was not every individual listed as present for the preceding public session.) It is clear from the Council's response that the discussion during the closed session reflected the matters addressed in ¶ 8-8 – the action of the Council after it resumed the public portion of the meeting. But someone looking at the description of the closed session found in the minutes could not be expected to assume that was the case. Had the Council provided a description in its summary of the closed session similar to that offered in its response, it would have clearly satisfied the topic disclosure contemplated by the Act.

III

Conclusion

We find that the Council violated the Act in that the summary of the closed session held on August 20, 2009, as reported in the publicly-available minutes failed to satisfy the disclosure requirements under §10-509(c)(2).

OPEN MEETINGS COMPLIANCE BOARD

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